



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

December 14, 2020

**MEMORANDUM**

**SUBJECT:** Response to the Office of Air and Radiation's Corrective Action Plan for Office of Inspector General Report No. 20-P-0236, *EPA Needs to Improve Oversight of How States Implement Air Emissions Regulations for Municipal Solid Waste Landfills*, issued July 30, 2020

**FROM:** Sean W. O'Donnell

A handwritten signature in blue ink that reads "Sean W O'Donnell".

**TO:** Anne L. Austin, Principal Deputy Assistant Administrator  
Office of Air and Radiation

Thank you for your memorandum dated September 28, 2020, which included the U.S. Environmental Protection Agency's planned corrective actions and estimated milestones dates for recommendations in the subject Office of Inspector General report. Based on the information and supporting documentation, the planned corrective action for Recommendations 1, 2, 3, and 7 meet the intent of our recommendations. You should track implementation of the corrective actions in the Agency's audit tracking system until all actions are completed. However, we do not agree with the planned corrective actions for Recommendations 4, 5, and 6.

In Recommendation 4, we recommended that the Office of Air and Radiation "develop and implement a process for the periodic review of municipal solid waste landfill design capacity information and Title V permit lists to identify municipal solid waste landfills with design capacities over the applicable threshold that have not applied for a Title V permit." The Office of Air and Radiation's response commits to assisting state and local air permitting authorities and EPA regional offices in implementing a process—not to establishing a process. To accept the Agency's corrective actions, the Agency would itself need to commit to developing and implementing a process.

In Recommendation 5, we recommended that the Office of Air and Radiation "update guidance to clarify the requirements for municipal solid waste landfills to submit initial design capacity reports, including how to:

- a. Address closed municipal solid waste landfill areas and the soil used in municipal solid waste landfill daily and final covers when calculating design capacity.
- b. Determine whether a municipal solid waste landfill is subject to Title V permit and nonmethane organic compound emissions reporting requirements."

The Agency response does not address the specific elements identified in "Part a" of Recommendation 5 on how it will update guidance to clarify how municipal solid waste landfills should address soil used for daily and final cover when calculating design capacity. We made this recommendation because neither

the EPA's 1996 guidance nor the "Regulation Navigation" tool include specific information on how to address soil used for daily and final cover. For the OIG to accept the Agency's corrective actions, the Agency would need to commit to including guidance on how to address soil used in municipal solid waste landfill daily and final covers when calculating design capacity in its "Regulation Navigation" tool or its municipal solid waste landfills checklist. The proposed corrective actions do satisfy "Part b" of Recommendation 5.

In Recommendation 6, we recommended that the Office of Air and Radiation "develop and implement a process to confirm that state plans approved for delegation of the 2016 municipal solid waste landfill Emission Guidelines contain all required program elements and provisions for submitting annual progress reports." The corrective actions do not meet the intent of the recommendation. We agree that the proposed corrective actions will address annual progress report requirements identified in Recommendation 6, but we do not agree that the proposed corrective actions will assure that state plans will include all required program elements.

Certain state plan requirements are outlined in 40 C.F.R. § 60.25. Specifically, 40 C.F.R. § 60.25(b) requires that each state plan "*shall* provide for... [p]eriodic inspection." According to the Office of Air and Radiation's response, the state plans it re-reviewed meet the requirements of 40 C.F.R. § 60.25(b) by "including state regulations *allowing* for periodic inspection and testing of designated facilities." "*Shall* provide for" constitutes a requirement, which "*allow* for" does not.

Additionally, 40 C.F.R. § 60.25(c) requires that each state plan "*shall* provide that information obtained by the State under [40 C.F.R. § 60.25(b)] shall be correlated with applicable emission standards... and made available to the general public." The response states that the Agency has re-reviewed the state plans approved to implement the 2016 municipal solid waste landfills emission guidelines and affirmed that these plans meet the requirement at 40 C.F.R. § 60.25(c) by "including state regulations *allowing* for this information to be made available to the public." Again, "*shall* provide for" is a requirement, which "*allow* for" is not.

Bolstering the OIG's understanding that 40 C.F.R. §§ 60.25(b) and (c) require that state plans substantively "provide for" rather than "allow for" these components, 40 C.F.R. § 60.25(d) requires that states specifically identify and provide copies of provisions required pursuant to 40 C.F.R. §§ 60.25(b) and (c).

If you or your staff have any questions, please contact Rashmi Bartlett, acting assistant inspector general for Evaluation, at (202) 566-1363 or [bartlett.rekha@epa.gov](mailto:bartlett.rekha@epa.gov); or Renee McGhee-Lenart, acting director, Air Directorate, at (913) 551-7534 or [mcghee-lenart.renee@epa.gov](mailto:mcghee-lenart.renee@epa.gov).

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